IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

ST.Rev..No. 317 of 2007

TA.36/2006 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
.....

PETITIONER/APPELLANT :

M/S.KUMMAYAPURATH SAW MILLS,
ULLIYERI, KOZHIKODE DIST.

BY ADV. SRI.B.V.JOY SANKER

RESPONDENT/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPL. GOVT. PLEADER SRI. VINOD CHANDRAN.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

- -

S.T.Rev. No. 317 of 2007

- -

Dated this the 29th day of November, 2007.

ORDER

H.L.DATTU, CJ,

This Sales Tax Revision Case is filed against the order passed by the Sales Tax Appellate Tribunal in T.A.36 of 2006 dated 30th May, 2007. The Tribunal, by its impugned order has confirmed the order passed by the assessing authority in imposing the tax liability in a sum of Rs.1,02,721/- and the penalty under Section 17(5A) of the Kerala Geneal Sales Act ('the Act' for short) in a sum of Rs.3,08,163/- and the registration fee along with the compounding fee in a sum of Rs.1100/-.

2. The assessee has framed the following questions of law for our consideration and decision:

> "A) Whether the re-opening of assessment under Section 19 of the KGST Act is necessary in a case where the tax due on the stock discrepancy detected during the shop inspection is paid to the department with an equal amount of tax so payable, under Section 47 of the Act, by way of compounding?
>
> B) Whether the assessing authority can re-open the assessment under Section 19 of the Act in case where the return is filed before the date of compounding order is passed by the Intelligence Officer?
>
> C) When there is no pattern of suppression and since the commodity is taxable at the point of first sales within the State, is it correct to estimate turnover towards probable omission and suppression.
>
> D) Has not the Tribunal went wrong in making addition to equal amount for an item which is not taxable at the hands of the assessee."

3. When the matter was posted for admission, learned counsel Sri. B.V.Joy Sankar would inform us that the petitioner is a small time dealer and therefore the petitioner may be granted sufficient time to pay the tax and the penalty imposed by the assessing authority. Sri.B.V.Joy Sankar also files an

affidavit of the petitioner agreeing to pay the amount due under the Act in instalments. He also submits that the petitioner has already paid Rs.30,000/- towards the tax liability. The affidavit is taken on record.

4. In the normal course, we would not have acceded to the request made by the learned counsel. But taking into consideration the financial inability pleaded by the petitioner and his learned counsel, we think it proper to grant the request made by the learned counsel Sri. B.V. Joy Sankar. Accordingly, we pass the following:

Order

(i). The order passed by the Sales Tax Appellate Tribunal is not disturbed.

(ii) The revision petitioner shall deposit the tax payable under the Act in a sum of Rs.72,721/- (Rs.1,02,721/- less Rs.30,000/-) within a month's time from today.

(iii) The petitioner shall pay the penalty imposed by the assessing authority under Section 17(5A) of the Act in twelve equal monthly instalments with due interest.

(iv) If for any reason the petitioner commits default in paying the amounts as directed by us, the authorities are at liberty to invoke appropriate proceedings to recover the amounts due from the petitioner.

5. This order of ours shall not be treated as a precedent in any other case.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb.